

## **II. RESPONSE TO OFFICE ACTION**

### **A. Status of the Claims**

Claims 54-84 were pending at the time of the Office Action. Claim 84 has been amended in the amendment set forth herein. No claims have been canceled, and no new claims have been added. Therefore, claims 55-84 are now pending and presented for reconsideration.

Regarding the amendments, claim 84 has been amended to recite “human” subject in the preamble; subpart a) has been amended to omit reference to “wherein the conjugate is capable of being taken up into target cells of a human subject,” and subpart c) has been amended to omit “human” and to recite “wherein the conjugate is taken up into target cells of a human subject.” Claim 84 does not include any new subject matter compared to claim 84 as originally written. Written description support for the amendment to claim 84 can be found generally throughout the specification, such as in the claims as originally filed. Examples of written description support for “wherein the conjugate is taken up into target cells of the subject” is discussed in greater detail below.

### **B. The Provisional Rejections Under the Judicially Created Doctrine of Obviousness-type Double Patenting**

The Examiner has set forth a provisional rejection of claims 55-64 and 67-84 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 32, and 38-42 of copending application number 10/732,919. Applicants understand that this is a provisional rejection because 10/732,919 has not issued. Applicants will seriously consider filing a terminal disclaimer once the rejection is no longer provisional.

### **C. The Rejections Under 35 U.S.C. 112, Second Paragraph, Are Overcome**

Claims 55-84 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for reciting the phrase “capable of being taken up into the target cells.” According to the Action, the claims is ambiguous because it is unclear as to whether the conjugate is actually taken up by the cells. Applicants respectfully traverse.

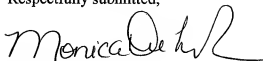
Without conceding that the claims as originally written were indefinite, Applicants draw the Examiner’s attention to the fact that subpart a) of claim 84 has been amended to omit the phrase “wherein the conjugate is capable of being taken up into the target cells,” and that subpart b) has been amended to recite “wherein the conjugate is taken up into the target cells.” Thus, claim 84 (and dependent claims) no longer make reference to the phrase “is capable of.” Thus, the rejection of each of the pending claims has been overcome.

Exemplary written description support for a conjugate that is taken up into the target cells can be found generally throughout the specification, such as on page 44, lines 12-14 and FIG. 4; Table 3; page 51, line 3 – page 52, line 14, Table 4, Table 5, and FIGS. 9-10; page 56, lines 3-8; page 59, line 9 – page 60, line 17; page 62, line 7 – page 64, line 1, Table 8, Table 9, FIG. 37A, FIG. 37 B; page 67, line 6 – page 68, line 12.

### **D. Conclusion**

In view of the foregoing, each of the pending claims is in condition for allowance, and a Notice of Allowance is earnestly solicited. The Examiner is invited to contact the undersigned attorney at (512) 536-5639 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Monica De La Paz", with a stylized flourish at the end.

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